

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6880 of 2022

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Naba Krishna Mahapatra *Petitioner*
.....
State of Odisha and Ors. *Opp. Parties*

-versus-

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Mr. Dillip Kumar Mohapatra,*
Adv.

-versus-

For Opp. Parties : *Mr. Sonak Mishra, SC*
(for S & ME Deptt.)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-27.04.2022
DATE OF JUDGMENT:-11.07.2022

Dr. S.K. Panigrahi, J.

1. The petitioner challenges the legality and validity of the rejection order passed by the Director of Elementary Education, Orissa dated 14.02.2022 for Inter-District transferring and prays for quashing of the same on the ground that no inter seniority can be fixed on the basis of

date of birth of the employees instead of their valid date of joining.

2. The petitioner was initially appointed as a Sikshya Sahayak on 02.04.2011 and posted under DI. Jharsuguda. As per the office order dated 07.05.2018 of the DEO, Jharsuguda the service of the petitioner was regularized as Level-V Asst. Teachers. Additionally, he is a locomotor disabled person having 70% permanent disability and also a bronchial asthmatic patient with congenital kyphoscoliosis with reversibility - 91% and require frequent medical treatment.

I. Facts of the case

3. Shorn of unnecessary details, the substratum of the matter presented before this court remain that in terms of the guideline issued by the Govt., the petitioner made necessary representation to the Director through DEO for his inter district transfer from present place of posting to Kundaposhi U.G.U.P School, Kuchinda under BEO, Kuchinda, Sambalpur district which is nearby to his native place and such representation was duly recommended by the DEO, Jharsuguda to the Director vide letter no. 2550 dated 13.07.2020.
4. Thereafter the Director, Elementary Education sought clarification from the Govt. vide letter dated 18.12.2020 and in response to the letter of the Director the Govt. vide letter

date 01.02.2021 clearly directed the Director to examine the case as per the guidelines and if applicable resubmit the proposal with views after due certification of the disability by the State Medical Board.

5. After getting the letter from the Govt. the Director requested the Chief Medical and Public Health Officer to examine the petitioner and issue Disable certificate afresh for his inter district transfer. The Chief Medical and Public Health Officer, Cuttack vide letter date 29.04.2021 intimated the Director that the petitioner is 70% permanent disabled person.
6. Thereafter, the petitioner approached this Court by filing a writ application bearing W.P. (C) No.28177/2021 with a prayer for his inter district transfer and this Court vide order dated 23.09.2021 directed the Director of Elementary Education, Orissa, to look into the matter and take decision, taking into consideration the plea taken in the writ petition and the recommendation therein within a period of 6 weeks. Citing non-compliance, the petitioner filed a contempt application bearing CONTC No. 7110/2021 on 29.11.2021, which is under jurisdiction of the Hon'ble Court for admission.
7. Subsequently, the Director rejected the claim of the petitioner for inter district transfer vide office order dated

14.02.2022. While admitting the percentage of disability, the Director rejected the claim of the petitioner for inter district transfer by referring to 1997 Rules, as amended and read with the Govt. Notification dated 04.10.2018 i.e. the Guideline for Inter District transfer read with the notification dated 17.05.2016 issued by the Health and Family welfare Department without considering the other resolution annexed in the earlier Writ Petition.

II. Submissions of the petitioner

8. Learned counsel for the petitioner submitted that admittedly there was recommendation by the DEO under Annexure-3 series. He admitted that the Government directed the Director under Annexure-5 to examine the matter as per the guideline and resubmit the proposal with his views after due certification of the disability by State Medical Board for consideration. He further admitted that the Medical Board granted fresh Disability Certificate and the same was again recommended to Govt. vide letter dated 09.07.2021/ Annexure-8.
9. It is also admitted in the impugned order that the Govt. notification dated 04.03.2018 is governing the field. So far as inter-district transfer and Clause- L of the said guideline which clearly spells out that "the transfer cases of persons with disability shall be considered on the basis of

certification of the disability by the State Medical Board, but the above facts has not been considered by the Director while rejecting the claim nor seeking any clarification from the Government in that regard. In fact, without application of mind by invoking the clause meant for mutual transfer or transfer on the ground of disease prescribed vide resolution dated 17.09.2016 of Health and Family Welfare Department, has rejected the claim.

10. Learned Counsel further submitted that Clause-6 (d) of the notification dated 17.05.2016 issued by Health and Family Welfare Department also permits for such transfer. It is further submitted that the Clause 16 of the resolution of GA Department dated 03.12.2013 also permits inter district transfer which has not been considered. He submitted that the Director also failed to take a note of the resolution dated 25.02.2021 of the Department of Social Security and Empowerment of Persons with Disability where clause-17 underlined that the employees with disability should be posted or transferred as far as possible nearer to his native place.
11. Moreover, there is no bar under 1977 Rules for inter-district transfer. Rather as per the Govt. notification dated 04.10.2018 inter district transfer is permissible and in view of the provision of Right of Persons with Disability Act, 2016,

read with the Government Notification (supra) the petitioner's request which is for inter district transfer is permissible and the rejection order passed by the Director is not only erroneous but also an instance of clear non application of mind.

III. Submission on Behalf of the Opposite party-1

12. Learned Counsel for the Opposite Parties submitted that as per the provision of Odisha Elementary Education (Method of Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Amendment Rules, 2014 and Odisha Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Amendment Rules, 2019, the service of the petitioner falls under District cadre and as per the said District cadre the petitioner's service is confined to Jharsuguda district only and there is no rule governing in the field for his transfer to the district of his choice i.e. Sambalpur and the same is not permissible other than his online application for transfer as per the aforesaid principles as laid down in para-7 of the present petition under Annexure-A/4.
13. Moreover, the petitioner had never submitted online application. It is needless to mention here that as per the prevailing rule, the inter district transfer of the petitioner from Kolbira Block of Jharsuguda district to Kuchinda Block

of Sambalpur district is eligible to be taken into consideration only based on the procedures as laid down in the Notification No.22167/SME dated 04.10.2018 issued by the Department of School and Mass Education. However, since the district cadre of the petitioner's service is confined to Jharsuguda district, hence the said transfer cannot be given effect to.

IV. Submissions by Opposite Party No.4

14. It is humbly submitted that as per the guidelines for Inter-district transfer and mutual transfer/ Intra-District transfer Rationalisation of Headmasters Asst. Teachers Asst. Teachers (Ex cadre) Jr. Teachers/ Junior Teachers (Contractual) and Gana Sikhyaks of Government Elementary Schools in the State vide Notification No. 22167/S&ME dated 04.10.2018 at para-2 (c) prescribes that Inter-District Transfer of elementary cadre teachers will only be considered on mutual ground or ground of terminal illness of self, subject to conditions laid down in this guidelines. But in the instant case, the prayer made by the petitioner for inter district transfer either on mutual ground or ground of terminal illness of self. Thereby, the case of the petitioner so far as inter district transfer is concerned cannot be considered as per the New Transfer Policy of the Government dated 04.10.2018. Besides para-2 (a) of the

notification dated 04.10.2018 which spells out that "*the transfer process shall be conducted only in online mode on a computer-based Programme*". But in the instant case the petitioner never chose to made application through online, as a result of which, his case could not come to the zone of consideration before the transfer Committee constituted for this purpose. However, pursuant to direction of this Court the off-line application was also duly considered by the authority and rejected rightly.

V. Analysis and Reasoning

15. The Supreme Court as well as High Courts through several judgments have iterated that the differently abled persons deserve sympathetic consideration and also need attention of authorities while undertaking transfers. In order to ensure that the transfers are taken up in a transparent and rational manner with utmost priority to public interest and appropriate consideration of human difficulties as far as practicable, the respective state governments should formulate appropriate guidelines in respect of the same. Therefore, the first and foremost, it is necessary to look at the state guidelines. The Govt. notification dated 04.03.2018 provides Guidelines for Inter-District Transfer & Mutual transfer / Intra-District transfer / Rationalisation of Headmasters / Asst. Teachers / Asst Teachers (Ex-cadre)/ Jr. Teachers/ Junior Teachers (Contractual) and Gana Sikhyaks

of Govt. Elementary Schools in the State. Clause- L of the same states that:

(1) The transfer cases of Persons with Disabilities (PwD) shall be considered on the basis of certification of the disabilities by the State Medical Board.

16. Resolution dated 25.02.2021 of the Department of Social Security and Empowerment of Persons with Disability deals with the reservations for the Persons with Disabilities. Clause 17 provides that:

17. Posting or transfer of employees with disabilities.- (1) The employees with disabilities should preferably be posted or transferred near to their native places or at least in their native Districts subject to administrative constraints.

(2) The Government employees having children or spouse with disabilities should be posted or transferred to such places where facilities of health or education or vocational training are available.

(3) Persons with Disabilities may be given posting according to their choice, if possible.

17. The Gujarat High Court in the case of *Dipika Kantilal Shukla vs State Of Gujarat*¹, held that the state has to act within the guidelines framed by them, otherwise it will remain nothing more than an empty formality on paper. It was further held that:

¹ (2006) 3 GLR 1987

“This court is conscious of the legal position that an employer has the right to transfer its employees in the interest of the administration and in public interest, since transfer is an incidence of service. However, when the employer itself has framed certain guidelines for certain categories of employees, with a clear intention, then the action of the concerned authorities should have a reasonable nexus with the objectives sought to be achieved. It is expected that the respondents will act within the guidelines framed by them, otherwise it will remain nothing more than an empty formality on paper. The very objective of framing the policy will be defeated in its implementation, which will result in arbitrariness and discrimination, resulting in violation of Article 14 of the Constitution of India.”

18. Similarly, Hon’ble Supreme Court in the case of ***State Of U.P. And Ors. vs Gobardhan Lal***² iterated the importance of adherence to the administrative guidelines.

“It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act

² AIR 2004 SC 2165.

or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

19. Additionally, Madhya Pradesh High Court in the case of **Kamlesh Sharma vs The State Of Madhya Pradesh**³ while dealing with the case of transfer of persons with disabilities held that the legislation is in furtherance of international commitments and to give an equal treatment to persons with disability.

³ WP-14841-2021

“It has to be appreciated that once a person is certified with permanent disability of more than 40% and is, thus, covered under the provisions of the said Act, this aspect is not germane. There is no doubt that the appellant is only to be considered for transfer to a proximate place to his native place, but the guidelines of 1988 make it clear that such request is to be accepted unless in case of administrative exigency otherwise.

In matters of transfer, this Court does not sit as a court of appeal. However, where the very basis is erroneous, this Court is entitled to intervene. Totally irrelevant factors have been taken into account as stated above and the provisions of statutory enactment like the said Act, the said Rules and the Office Memorandum issued in furtherance thereof are sought to be defeated. One cannot lose sight of the fact that the legislation is in furtherance of international commitments and to give an equal treatment to persons with disability. All this has been given a go-bye while rejecting the request of the appellant and the Bank insists on implementing the erroneous decision. In such a case, this Court cannot be powerless to remedy the situation.”

20. Hence, it may be concluded that the bar under 1977 rules for inter district transfer shall not be applicable on a person with disability. Moreover, in view of provision of Right of Persons with Disability Act, 2016, read with the Govt. Notification (supra) permits inter district transfer of a person with disability. Therefore, the rejection order vide office order dated 14.02.2022 passed by the Director is

hereby quashed. The Director is hereby directed to complete the transfer process within a period of THREE months.

21. The Writ Petition is, accordingly, disposed of.

(Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 11th of July, 2022/B. Jhankar*

